



LEGAL UPDATE

What *Sedumedi v Sefako Makgatho Health Sciences University* Teaches Employers About Contract Clarity

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ISSUE

Can an employer terminate a fixed-term employment contract prior to its expiry for operational reasons, where the contract does not explicitly provide for such early termination?

FACTS

In September 2018, Mr David Sedumedi (**"Mr Sedumedi"**) entered into a five-year fixed-term contract with Sefako Makgatho Health Sciences University (**"The University"**), commencing 1 October 2018 and ending 31 September 2023. He served as Director: Institutional Advancement & Internationalisation.

By June 2021, his salary had risen to R129,647.17 per month. Around this time, the University initiated restructuring and informed Mr Sedumedi that his role might become redundant. A new role of Director: Internationalisation was created, and the "Institutional Advancement" component was downgraded.

Mr Sedumedi argued that he should automatically be appointed to the new role. The University disagreed and advertised the position. He chose not to apply.

In February 2022, he was formally retrenched, with his last working day set for 28 February 2022. He was paid notice pay, severance, and leave totalling R399,823.81. A month later, his attorneys wrote to the University, claiming unlawful early termination of a fixed-term contract. Legal action followed, with Mr Sedumedi claiming R2,333,649.06, being his salary for the 18 remaining months of his contract.

FINDINGS

The court, in line with the precedent established in *Buthelezi v Municipal Demarcation Board*^[1], upheld the principle that a fixed-term contract may only be terminated prematurely by the employer if the contract explicitly provides for such a right or if there is a material breach by the employee. The University's argument relied on the incorporation of its "Human Resource Policies and Procedures", particularly the "Termination of Employment Policy and Procedure", into Mr Sedumedi's contract of employment. The University claimed that the Appointment Letter's reference to "conditions of service" meant that the Termination Policy governed the contract and that it was therefore entitled to terminate the contract of employment on one month's notice for operational purposes.

The court rejected this argument, referring to several key points:

- 1. Interpretation of the Appointment Letter:** The court followed the principles set out in *Capitec Bank Holdings Ltd v Coral Lagoon Investments*^[2] and *University of Johannesburg v Auckland Park Theological Seminary*^[3], emphasising that interpretation starts with the text itself. The text of the Appointment Letter did not support the University's claim that it had the right to terminate the contract on notice. The court adhered to the *Natal Joint Municipal Pension Fund v Endumeni Municipality*^[4] case, where the text of a document is given the strongest weight in determining its meaning.
- 2. Incorporation of the Termination Policy:** The University argued that the reference to "conditions of service" in the Appointment Letter incorporated its Termination Policy as a contractual term. The court cited *Siyotula v Mogale City Local Municipality*^[5] in rejecting this claim, stating that incorporating a policy into a contract requires clear and unequivocal consent from the employee. Mr Sedumedi had not explicitly agreed to the incorporation of the Termination Policy into his contract, and therefore, the policy could not be treated as part of the contract.
- 3. Failure to Comply with the Text:** The court found that the University's failure to clearly incorporate the Termination Policy into the contract meant that the contract should be interpreted based on its plain text, which did not support the University's argument for early termination. This aligns with the *Endumeni* case, where the court warned against substituting the actual terms of the contract with what might seem reasonable or businesslike.

Conclusion

The court concluded that the University was not entitled to terminate Mr Sedumedi's fixed-term contract prematurely. The contract did not grant the University the right to terminate the agreement on one month's notice for operational reasons. The University's attempt to incorporate the Termination Policy into the contract by reference was found to be ineffective due to insufficient clarity and the lack of explicit agreement by Mr Sedumedi.

In line with the principles established in *Buthelezi v Municipal Demarcation Board*, the court ruled that the University's premature termination constituted a repudiation of the contract, which Mr Sedumedi accepted. He was entitled to damages for the unexpired portion of his contract.

The key takeaway from this case for employers is that fixed-term contracts must include clear, mutually agreed termination clauses. If employers wish to rely on internal policies incorporated into employment contracts, these policies must also be clearly referenced and explicitly agreed upon by both parties.

[1] (2004) 25 ILJ 2317 (LAC)

[2] 2022 (1) SA 100 (SCA)

[3] 2021 (6) SA 1 (CC)

[4] 2012 (4) SA 593 (SCA)

[5] Unreported judgment dated 5 April 2024 under case number J224/2024 per Snyman AJ

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